(26,398)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 390.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1918.

1 I. *Petition. Filed February* 29, 1912.

In the Court of Claims.

No. 31476.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

vs.

THE UNITED STATES.

Petition.

(Filed Feb. 29, 1912.)

To the Chief Justice and Judges of the Court of Claims:

The petition of the St. Louis, Iron Mountain and Southern Railway Company respectfully represents:

I.

Your petitioner is a body corporate, duly incorporated under the laws of the State of Missouri and from a time long prior to any of the matters and things hereinafter alleged and complained of, it has owned and operated a line of railway between Tower Grove (near St. Louis), in the State of Missouri, and Texarkana in the State of Arkansas.

II.

By the acts of Congress approved February 9, 1853 (10 Stat. 155), and July 28, 1866 (14 Stat. 338), the United States granted to the States of Missouri and Arkansas certain lands from the public domain for the purpose of aiding in the construction of a railroad between the Mississippi River opposite the mouth of the Ohio
2 and the Texas boundary, near Fulton, in the State of Arkansas, and that portion of the petitioner's said line of railway between Poplar Bluff in the State of Missouri and Texarkana in the State of Arkansas, was built upon the route and under the terms, conditions and obligations provided by said Acts of Congress.

III.

The 4th section of said Act of 1853 provided that—

The said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge, upon the transportation of any property or troops of the United States.

And the 1st section of said Act of 1866 further provided that—

All property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge and expense of the company, or corporation owning or operating said road and branches respectively, when so required by the Government of the United States.

And the 6th section of the said Act of 1853 further provided that—

The United States mail shall be transported over such road, under the direction of the Post Office Department, at such prices as Congress may by law direct; Provided, that until such price is fixed by law the Postmaster General shall have the power to determine the same.

The 13th section of the Act of July 12, 1876 (19 Stat. 78), provided that—

Railroad companies whose railroad was constructed in whole or in part by a grant of land made by Congress on the condition that the mails should be transported over their road at such prices
3 as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act.

And the Act of March 23, 1910 (36 Stat. 243-256), making appropriations for the army for the fiscal year ending June 30, 1911, contained the following proviso which had been, in identical language, incorporated in each Army Appropriation Act for many years previous:

That in expending the money appropriated by this act, a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation, having claims against the United States for transportations of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for such transportation of such troops and munitions of war and military supplies and property, as the Secretary of War shall deem just and reasonable under the foregoing provisions, such rate not to exceed fifteen per centum of the compensation for such Government transportation as shall at the time be charged to and paid by private parties to any such company for like and similar transportation, and the amount so fixed to be paid shall be accepted as in full for all demands for such service.

And your petitioner is informed, advised, and believes, and therefore alleges, that at the time of the transactions hereinafter alleged and complained of, the Government of the United States did not re-
quire, and no officer of the Government had authority
4 to require it to furnish transportation service to the Government for anything less than its public rates of compensation, except as the Postmaster General was authorized by the said Act of 1876 to require the mails, and the Secretary

of War was authorized by the said Act of 1910 to require "troops and munitions of war and military supplies and property" to be transported at the reduced rates respectively provided in said Acts.

V.

The Acts of March 3, 1873 (17 Stat. 558), July 12, 1876 (19 Stat. 78), June 17, 1878 (20 Stat. 142), March 3, 1905 (33 Stat. 1088), March 2, 1907 (34 Stat. 1212), and May 12, 1910 (36 Stat. 355) authorize and empower the Postmaster General to enter into contracts with railway companies for the transportation of the mails and fix the annual compensation for the service on each route upon the basis of its mileage and the average weight of mails carried over it as ascertained by weighing for a specified number of days not less frequently than once in four years.

From a time prior to 1873, your petitioner's said line of railway between Tower Grove and Texarkana has been by the designation of the Postmaster General a postal route, numbered 147,041, and during all of said time, under contracts made with the Post Office Department in accordance with the said Act of 1873 and subsequent Acts, petitioner has transported and is transporting the mails over said route in any and all of its cars and trains as the Postmaster General has directed: and for this service between Tower Grove and Poplar Bluff, it has been paid at the full rate, and between Poplar Bluff and Texarkana, at the land grant rate of compensation ascertained to be due under the terms of said Acts except as hereinafter stated.

5 VI.

The Act of May 27, 1908 (35 Stat. 412), making appropriation for the service of the Post Office Department for the fiscal year ending June 30, 1909, appropriated, and each subsequent Post Office appropriation Act has appropriated, a specific sum of money "for pay of freight or expressage on postal cards, stamped envelopes, newspaper wrappers, and empty mail bags" and has provided that—

The Postmaster General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, shall be transmitted by either freight or express.

VII.

Upon your petitianer's said postal route the volume of the mails bound southward out of St. Louis is much greater than of those

bound northward into St. Louis, and for this reason the northward bound mails contained many empty mail bags which were weighed as mail and taken into account in ascertaining petitioner's compensation for service on said route until the weighing in the year 1910 to ascertain its compensation for the quadrennial term beginning July 1, 1910. Before said last named weighing the Postmaster General withdrew said empty bags from the mails as regularly and normally carried over your petitioner's route and directed that they be not included in the weighing and the weight of said bags was not taken into account in ascertaining and fixing petitioner's compensation for said term.

6 VIII.

Thereafter the Postmaster General retained said empty mail bags at Texarkana and Little Rock until there was at each place what he deemed freightable lots and as these collected from time to time at each place he caused them to be delivered to your petitioner to be transported to St. Louis as freight at your petitioner's public tariff rates for such transportation service and as said empty mail bags were delivered to petitioner from time to time between July 1, 1910, and February 1, 1912, it transported them as it was directed to do by the Postmaster General in freight cars in its freight trains to St. Louis.

Your petitioner is not informed and therefore can not state the amount by which its annual compensation for service on said route would have been increased if said empty mail bags had been included in said weighing described in paragraph VII hereof, but it alleges that said compensation would have been very greatly increased, and it is informed and believes, and therefore states that the exact amount of said increase can be determined from the records of the Post Office Department.

And your petitioner further alleges that the Postmaster General treated the transportation of said empty mail bags as freight shipments for the purpose of determining its compensation therefor, and for no other, and in arriving at the amount of said compensation the Postmaster General and the Accounting Officers of the Treasury decided and determined that petitioner's said public tariff rate is capable of division upon a mileage basis, and that petitioner is required by law to furnish free transportation for these shipments between Poplar Bluff and Texarkana, and in furtherance of these rulings they divided the said public tariff rate in each case into two parts

7 apportioned respectively to the mileage north of Poplar Bluff and the mileage south of Poplar Bluff covered by the shipment, and in each case they allowed and paid to petitioner that portion of the compensation which they had thus ascertained and determined to be applicable to that portion of its service which was performed north of Poplar Bluff and deducted and withheld that portion which they had so held to be applicable to the service south of Poplar Bluff.

Your petitioner denies that its said public tariff rates can be

thus divided and applied lawfully, and it further denies that it is required by law to transport over its said line between Poplar Bluff and Texarkana at any less than public tariff rates any freight for the United States except as provided by the Act of March 23, 1910, set out in paragraph IV hereof.

IX.

Your petitioner is advised that its said transportation of said empty mail bags, as hereinbefore described, was a part of its mail transportation service on its said postal route, No. 147,041, and that it is entitled to have the judgment of this court for a sum equal to the difference between the compensation which was paid it for said service between July 1, 1910, and February 1, 1912, and the compensation it would have received for the same period if the said mail bags had been weighed and taken into account in fixing said compensation, and petitioner alleges that this sum would amount to, to-wit, $15,000.

And if petitioner is mistaken in this it alleges that it is entitled to have the judgment of this court for the sums deducted, as described in paragraph VIII hereof, from its compensation for transporting said bags as freight which amounts to $10,689.21.

8 And petitioner prays judgment for the sum of fifteen thousand dollars, together with its costs in this behalf incurred.

ST. LOUIS, IRON MOUNTAIN &
SOUTHERN RAILWAY CO.,
By E. J. PEARSON,
First Vice-President.

SAM'L A. PUTMAN,
Attorney for Petitioner.

STATE OF MISSOURI,
St. Louis City, ss:

Before me, Charles C. Hewitt, a notary public in and for said city, personally appeared E. J. Pearson, who being duly sworn by me on oath says that he is the First Vice-President of the petitioner in the foregoing petition; that he has read the said petition and the allegations thereof are true to the best of his information and belief; that there is justly due from the United States to the petitioner the said sum therein claimed after allowing all just credits and set-offs, and that no assignment of said claim or interest therein has been made.

E. J. PEARSON.

Subscribed and sworn to before me this 26th day of February, 1912.

My commission expires June 13, 1914.

[SEAL.] CHARLES C. HEWITT,
Notary Public.

9 II. *General Traverse.*

Court of Claims.

No. 31,476.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

vs.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

10 III. *Substitution of Attorney of Record.*

On September 19, 1916, Benjamin Carter, esq., was substituted as attorney of record, on motion filed and allowed by the Court.

IV. *Argument and Submission of Case.*

On November 7, 1917 the case was argued and submitted on merits by Mr. Benjamin Carter and Mr. Philip M. Ashford, for claimant, and Mr. W. F. Norris, for the defendants.

11 V. *Findings of Fact, Conclusion of Law, and Opinion of the Court by Campbell, Ch. J.*

Filed December 3, 1917.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Claimant, the St. Louis, Iron Mountain and Southern Railway Company is a corporation duly incorporated under the laws of the State of Missouri, and since July 1, 1910, as well as long before that time, owned and operated a line of railway between Tower Grove (near St. Louis) and Texarkana, Ark.

So much of said railway line as lies between Poplar Bluff, Mo., and Texarkana, Ark., was aided in its construction by a grant of lands from the United States under the provisions of the act of

February 9, 1853, 10 Stats. 155, and the provisions of the act of July 28, 1866, 14 Stats. 338, passed in connection with said grant. The fourth section of said act of 1853 provides:

"The said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges, upon the transportation of any property or troops of the United States."

The first section of said act of July 28, 1866, provided with respect to said railroad that—

"All property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge and expense of the company, or corporation owning or operating said road and branches respectively, when so required by the Government of the United States."

II.

February 4, 1910, the Post Office Department transmitted to claimant company a "distance circular" which relates to mail transportation. The same was duly filled out, verified by the chief engineer of claimant, and returned to the Post Office Department. Between the 17th day of February, 1910, and the 1st day of June, 1910, the Post Office Department made the quadrennial weighings of mail in the weighing division, which included claimant's lines.

12 III.

Prior to said weighing of the mails mentioned in Finding II, Congress had passed the act of May 27, 1908, 35 Stat., 412, making appropriations for the service of the Post Office Department and providing "for pay of freight or expressage on postal cards, stamped envelopes, newspaper wrappers, and empty mail bags" a stated sum. The act contained the following provision:

"The Postmaster General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment and other supplies for the Postal Service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment and other supplies for the Postal Service, except postage stamps, shall be transmitted by either freight or express."

Post office appropriation acts subsequent to May 27, 1908, have appropriated a specific sum for the payment of freight or expressage on postal cards, stamped envelopes, newspaper wrappers and empty mail bags, and have carried a similar provision to that above relative to withdrawing said articles from the mails preceding weighing periods.

IV.

Prior to the weighing of the mails on claimant's said route, the Postmaster General, acting under authority of the provisions of said act of 1908, withdrew from the mails the empty mail bags and the same were thereafter transported by freight over claimant's said line of railway, and the weights thereof were not included in the estimates of the weight of mail carried during contract term beginning July 1, 1910.

V.

The empty bags withdrawn from the mails during the weighing season aforesaid in 1910 and thereafter sent by freight to St. Louis, Mo., was as follows: From Texarkana, Ark., 121,122 pounds and from Little Rock, Ark., 180,184 pounds. If these empty mail bags had not been so withdrawn, but had been continued in the mails and the weight thereof included with the weight of the mails upon which the compensation on the route was based, the claimant would have received $15,296.82 more than it did receive for service performed between July 1, 1910, and February 1, 1912.

VI.

During the period from July 1, 1910, to and including January 31, 1912, a total of 1,452,271 pounds of empty mail bags were transported over the railroad of the claimant in freight trains from Texarkana, Ark., to St. Louis, Mo., for which service the claimant submitted bills at the published tariff rate against the United States amounting in the aggregate to $14,043.17.

13 In making settlement of these charges the Auditor for the Post Office Department made a deduction of the entire charge for the service performed from Texarkana, Ark., to Poplar Bluff, Mo., as aforesaid, amounting to $8,251.45.

VII.

By the sixth section of said act of 1853 it was provided that—

"The United States Mail shall be transported over such road, under the direction of the Post Office Department, at such prices as Congress may by law direct; provided that until such price is fixed by law, the Postmaster General shall have power to determine the same."

By the thirteenth section of the act of July 12, 1876, 19 Stat. L. 78, it was provided that:

"Railroads whose railroad was constructed in whole or in part by a grant of land made by Congress on the condition that the mails should be transported over their road at such prices as Congress would by law direct, shall receive only 80 per centum of the compensation authorized by this act."

Ever since the passage of said act it has been the custom and practice of the Post Office Department to pay all the railroads whose con-

struction was aided by grants of land from the United States 80 per centum of the rate of compensation paid to nonland-aided roads for carrying the mails.

VIII.

Claimant presented its bills for the transportation of said freight at the full commercial rate provided by the duly published and approved tariffs. In making settlement therefor, the Postmaster General made deduction of the entire charge for said transportation performed between Texarkana, Ark., and Poplar Bluff, Mo., and refused and declined to pay claimant anything therefor, on the ground that it was obliged by the provisions of the acts of 1853 and 1866 to transport said empty mail bags without cost or expense to the United States.

IX.

Claimant objected and protested against the proposed deduction and appealed from the action of the Auditor for the Post Office Department to the Comptroller of the Treasury. (17 Comp. Dec. 749.)

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and its petition should be dismissed.

It is adjudged and ordered that the claimant's said petition be, and the same is, hereby dismissed, and judgment is rendered in favor of the United States against the claimant for the cost of printing the record in this cause in the sum of twelve dollars and twenty-two cents ($12.22), to be collected by the clerk as provided by law.

14 *Opinion.*

CAMPBELL, *Chief Justice,* delivered the opinion of the court:

The plaintiff is a land-aided railroad as to part of the lines included in its system. It had a contract for carrying the mails when the act of May 27, 1908, 35 Stat., 412, was enacted. By that act the Postmaster General was required to withdraw from the mails certain specified articles, including "empty mail bags," in the respective weighing divisions of the country immediately preceding the weighing period in said divisions, and thereafter to transmit the same by either freight or express. Said action was to be taken when the excluded articles were "in freightable lots and whenever practicable."

Prior to the quadrennial weighing in the division which included plaintiff's lines, the empty mail bags were withdrawn in accordance with said act, and their weight was not included in the average weight of the mails upon which plaintiff's compensation for the

quadrennial period commencing July 1, 1910, was adjusted. The empty mail bags were transported by freight.

Prior to the act of 1908 the custom was to weigh the empty mail bags as part of the mails and to include their weight in ascertaining the average weight of the mails.

The plaintiff "presents two questions for consideration: (1) Could the empty mail bags be lawfully withdrawn from the mails merely for the purpose of reducing claimant's compensation for mail transportation service, (2) and assuming that said empty mail bags were lawfully withdrawn from the mails and shipped by freight, were they 'property' of the United States within the purview" of the land grant acts of 1853 and 1866?

There is no merit in the suggestion that the act of 1908 is unconstitutional. The Postmaster General acted in accordance with the requirements of said act. The power possessed by Congress to establish post offices and post roads embraces the regulation of the entire postal system of the country. "The right to designate what shall be carried necessarily involves the right to determine what shall be excluded." Ex parte Jackson, 96 U. S. 727, 732; Public Clearing House v. Coyne, 194 U. S. 497. The contract under which plaintiff was transporting mails in 1908 and up to the beginning of the quadrennial period of 1910 was not affected. The act in no wise impaired the obligation of a contract. "Empty mail bags" could not have been regarded as part of the mails except Congress or lawful regulations authorized them to be so, and when Congress required their withdrawal they ceased to be part of the mails for any purposes of weighings. The plaintiff was not entitled to have their weight added to the average weight of the mails as ascertained after their exclusion.

That the empty mail bags transmitted by freight were property of the United States cannot be questioned. The land grant acts of 1853, 10 Stat. 155, and of 1866, 14 Stat. 338, applicable to plaintiff's line in question, provide for the transportation of "all property and troops of the United States" over said railroad at the cost, charge, and expense of the company owning or operating the road, when so required by the Government of the United States. The words "all property" cannot be restricted to impedimenta or property connected with or appertaining to the Military Establishment of the Government. The fact that "troops of the United States" are also to be transported free does not qualify or limit the former phrase.

Said land grant acts imposed an obligation upon plaintiff to transport the empty mail bags as freight because they were property of the United States.

It follows that the petition should be dismissed, and judgment rendered in favor of the United States against the claimant for the cost of printing the record in this cause in the sum of $12.22, to be collected by the Clerk as provided by law. And it is so ordered.

HAY, *Judge;* DOWNEY, *Judge;* BARNEY, *Judge;* and BOOTH, *Judge,* concur.

16 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 3rd day of December, A. D., 1917, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that the St. Louis, Iron Mountain and Southern Railway Company, as aforesaid, shall not have and recover any sum in this action of and from the defendants, the United States, and that the claimant's petition be and it is hereby dismissed, and it is further ordered, adjudged, and decreed that the defendants, the United States, shall have and recover of and from the St. Louis, Iron Mountain and Southern Railway Company, as aforesaid, the sum of Twelve Dollars and twenty-two cents ($12.22), the cost of printing the record in said cause in this court, to be collected by the clerk, as provided by law.

BY THE COURT.

VII. *Claimant's Application for, and Allowance of, Appeal.*

Claimant by its attorney hereby makes application for an appeal to the United States Supreme Court from the judgment rendered by this court on the 3rd day of December, 1917, dismissing the petition.

BENJ. CARTER,
Attorney for Claimant.

Filed March 1. 1918.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

March 1, 1918.

17 In the Court of Claims.

No. 31476.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

vs.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the Court; of the opinion of the Court; of the judgment of the Court; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this Second day of March, A. D., 1918.

[Seal of Court of Claims.]

SAMUEL A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 26,398. Court of Claims. Term No. 390. St. Louis, Iron Mountain & Southern Railway Company, appellant, vs. The United States. Filed March 22d, 1918. File No. 26,398.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 71.

THE ST. LOUIS IRON MOUNTAIN AND SOUTHERN RAILROAD COMPANY

v.

THE UNITED STATES.

The matter to be determined in this case, brought here by appeal from the Court of Claims, is the legal status, under the terms of the Postoffice Appropriation Act for the fiscal year 1909 (35 Stats. Ch., p. 412; Record, p. 3) of empty mail bags. That act, approved May 27th, 1908, provided that these empty bags should be shipped by freight. Appellant's mails being weighed in the spring of 1910 for fixing the basis of its compensation during a four-years term commencing on July 1st following, there were no empty bags included and a considerable shrinkage of its mail pay resulted. The empty bags of appellant's routes, from shortly before that period, were assembled by the postal authorities at Texarkana and Little Rock, Arkansas, and were shipped back by appellant's freight trains to St. Louis. Between Texarkana and Poplar Bluff, Missouri, appellant's line is of the class known as "free land-grant"—on which the Government at that time paid nothing for transportation of its property or of its troops. Out of aggregate freight charges for these shipments of $14,043.17, there accrued on this land-aided track $8,251.45, and

the latter amount was deducted at the Treasury Department from the bills and has been withheld from appellant.

PROPOSITIONS.

The words in the land-grant statutes, relating to passenger and freight transportation, which define the subjects of transportation free of charge, or at less rates than those established by the ordinary tariffs, are to be construed strictly.

United States v. *Union Pacific Railroad Co.*, 250 U. S. (not officially reported).
Alabama Great Southern Railroad Co. v. *United States*, 49 Ct. Cl., 522.
Chicago, Milwaukee & St. Paul Ry. Co. v. *United States*, 53 Ct. Cl.

When a statute, not clear upon its face, is to be interpreted, courts will consult the legislative reports and debates for expressions or indications of the legislature's intention.

St. Louis Southwestern Ry. Co. v. *Craft*, 237 U. S., 648.
Tap Line Railroad Cases, 234 U. S., 1 (27).
United States v. *Delaware & Hudson Co.*, 213 U. S., 366.
United States v. *Freight Association*, 166 U. S., 290.

A statute, although in clear terms, is not to be interpreted in a way to produce results manifestly unjust or absurd.

Hawaii v. *Mankichi*, 190 U. S., 197.
Lau Ow Bew v. *United States*, 144 U. S., 47.
Heydenfeldt v. *Daney Gold Co.*, 93 U. S., 634 (638).
United States v. *Kirby*, 7 Wall., 482.

ASSIGNMENT OF ERRORS.

There is hereby assigned as error, committed by the Court of Claims:

(1) That judgment was not rendered in appellant's favor either (a) for the full amount of the freight charges which accrued on its land-aided track, as stated in the petition, or (b) for eighty per cent of that amount.

(2) That the petition was dismissed.

ARGUMENT.

Are mail bags "property of the United States" in the meaning of the land-grant acts and adjudications thereon, fixing generally, for such property, 50 per cent of the ordinary railroad rates and, as to some exceptional railroads, denying any compensation whatever? If mail bags are, strictly, property of the United States, did Congress, in enacting the law of March 2, 1907, intend that these bags, when empty, should go free on some lines and go at half-pay on others.

Firstly: The railroad companies obtained public lands for the consideration of serving the Government itself, by transporting its troops and its property. The contents of the mail bags are not property of the United States, and the mail bags, whether loaded with mails, or going back empty for re-loading, are merely appurtenant to the matter carried in them. So, naturally, the loaded bags always had been, and still are, treated as part of the mails and for this reason subject on land-aided railroads to 80 per cent of the rates of mail pay established, not by the land-grant acts above referred to, but by the act of July 12, 1876 (19 Stat. Ch., 179, p. 78, Record, p. 2). Inasmuch as every mail bag, while used in the mail service, must sometimes be full and sometimes empty, it would seem to fall reasonably under

the operation of this latter act, rather than of the acts which relate to freights and passengers. The acts relating to troops and baggage have been strictly construed. This court recently has held that enlisted recruits, definitively accepted for the army, but not sworn in, and even furloughed soldiers, are not troops in the sense of these laws (*Union Pacific R. R. Co.* v. *United States*, decided March 31, 1919, not officially reported). A similar ruling has been made by the Court of Claims (*Alabama Great Southern Railroad Co.*, 49 Ct. Cls., 522) as regards State militia moving at the expense of the United States to and from camps of instruction where they would be commanded by officers of the regular army. As for "property," the Court of Claims in the *Chicago, Milwaukee & St. Paul Ry. Co.'s* case, 50 Ct. Cls., 413, held that land grant rates do not apply to personal effects of army officers, transported upon changes of station—even though much of those freights were required for the punctual and proper performance of the officers' duties upon their arrival at their new stations; and this ruling has been confirmed, after quite deliberate consideration, in the case of the *Louisville & Nashville Railroad Co., 54 Ct. Cls.*, case No. 33,213, not yet reported.

Fifty per cent rates for freights, the property of the Government, were made generally applicable by the act of Congress approved June 30, 1882 (22 Stats., Ch. 254, p. 120) and this provision became permanent by codification in the supplement to the Revised Statutes (Ch. 390, p. 376). It seems safe to say that no member of the Congress which enacted that law (knowing that eighty per cent of full rates was already established by statute for mail service on land-aided routes) could have been made to believe that, in regard to the carriers' compensation, any element of the mails would ever

by interpretation, be counted as among its subjects.

Stealing a mail bag (not mail in a bag) is still punished under Section 5475 of the Revised Statutes; and injuring a "mail bag" or other thing "designed for use" is punished under Section 7456 thereof. These enactments are still carried in the Postal Regulations, being Sections 1696 and 1697 of the 1913 edition of Postal Laws and Regulations. If these receptacles of mail had by the acts of 1907 become mere "property" of the United States, would they not have automatically become subjects of the laws against larceny, etc.; would these laws, enacted when the bags were carried in the mail cars exclusively, be still treated as live?

Secondly: Did Congress, in providing by the act of March 2, 1907, that the empty mail bags should be carried by freight trains, mean, beside saving a difference between mail rates and freight rates, to obtain for the bags on land-aided railroad track a different abatement from full rates than that which had applied to them when carried in the mail cars? To say the least, nothing occurred, in the making of this new law, to indicate any such purpose. This change in the law originated with the Committee on Postoffices and Post Roads of the House of Representatives in the Fifty-third Congress. The bill brought in by the committee contained four provisions for reducing the compensation of the railroads, but this one failed of adoption. The four provisions were explained on the floor by the chairman and other members of the committee. All of these spoke of a considerable economy to be effected by the provision that empty mail bags should be shipped by freight trains; but none of them, nor any one at any stage of the legislation, hinted that there would be a special saving as to the land-aided mail routes by reason of the difference between the ratios of pay applicable respectively to mails

and to freights. In the Fifty-fourth Congress again the House put the empty-bag clause in its bill, and again the reports and debates were barren of any suggestion of enlarged land grant savings. This time the new plan became law (Congressional Record: vol. 41, pt. 4, pp. 3176, 3177, 3252, vol. 42, pt. 3, pp. 2778, 2835; pt. 4, pp. 3233, 3234).

On any point where an act of Congress is not clear, or is silent, the courts, in interpreting it, will consult committee reports or any other authoritative expressions, occurring in the process of its enactment, which indicate what the legislative body had in mind.

St. Louis Southwestern Ry. Co. v. *Craft*, 237 U. S., 648.

Tap Line Railroad Cases, 234 U. S., 1 (27).

United States v. *Delaware & Hudson Co.*, 213 U. S., 366.

United States v. *Freight Association*, 166 U. S., 290 (320).

If it was the purpose of Congress that the empty mail bags should go on a basis of fifty per cent, as against eighty per cent, of full pay on some lines and should be carried free of charge on other lines, it is somewhat remarkable that no such consideration was mentioned.

FREE CARRIAGE NOT DUE FOR ANY ELEMENT OF THE MAILS.

The foregoing observations apply to "free land grant" and "fifty per cent" land-grant lines alike. But it is not to be assumed that, as matter of law, the two classes of roads are in the same case.

Not merely do the "free-land grant" lines (five in number) suffer a peculiar hardship from the present practice; they thus suffer for the first time. The act of July 12, 1876, was always construed as giving to land-

aided lines uniformly 80 per cent of the full mail-pay rates. So for twenty-two years the St. Louis Iron Mountain & Southern Railway Company had received for carrying the mail bags, full or empty, the same rates that were paid on those lines to which, as regards passenger and freight service, 50 per cent compensation was paid by the Government. This fact is shown by the reports of the Postmaster General, judicially known to this court. It was necessarily known to Congress in 1908. In the absence of any legislative avowal or suggestion of a purpose to do so revolutionary a thing, is it not rash to conclude that Congress finally willed that, while all land-aided railroads should remain on one footing as regards loaded mail bags (and their loads), there should be, with respect to the empty bags, one paid class and one unpaid class of land-aided railroads? Is it not more reasonable to say that, in shifting the empty bags from mail-car service to freight-train service and from statutory mail pay to freight rates of pay, Congress did not intend to put any new qualification into the term "railroad companies whose railroad was constructed . . . . by a grant of land made by Congress" which it used in the act of July 12, 1876?

So substantial an enactment is not to be treated as repealed *in regard to a part* of the subject-matter by any implication that can reasonably be avoided—certainly not by an implication that would exact without compensation a service for which compensation had been paid previously for many years.

A somewhat surprising incongruity, as regards mail service performed by freight trains, is disclosed when the practice of the Postoffice Department here complained of is compared with a practice, previously established, viz., in 1911, regarding periodicals of the class denominated in postal circulars "blue tag" matter. Such periodicals, when they are to be

mailed in large quantities, are delivered to the postmaster at the point of publication and, being weighed, are shipped in freight cars to railroad centers where distribution may conveniently be made, and from those points the smaller packages go out in the mail cars. In establishing this practice the postal officers did not claim that the periodicals, while moving by freight trains, were not mails. They did not undertake to subject such matter to fifty per cent freight rates on land-aided roads. Possibly the controlling consideration in the classification of the "blue tag" matter was that it was all the while under control of the postal authorities, being turned over to the postmaster, as effectually as are letter mails, at the points of original shipment. More imperatively still would this rule require classification of empty mail bags as mail (when carried in freight cars). For purposes of compensation, Mail bags always, outgoing and incoming and between times, *i. e.*, for repairs, safe-keeping and for proper distribution among the mail routes, are in the hands of the postal authorities. They are never thought of as having any use except a mail use.

The Comptroller of the Treasury (17 Comp., 900) ruled that shipment of "blue tag" matter by freight trains was lawful provided the amount paid therefor, added to the amount due at mail rates for the weight of matter carried in the mail trains, did not exceed the amount which the Postmaster-General was authorized to pay for the total weight of mails carried. Is it conceivable that payment for the empty mails bags as freight would be held to be lawful, when, added to the payments for service by mail trains, it carried the total of the disbursements beyond the limit fixed by Congress for the mails as a whole? Yet why should any thought be had of the mail pay, in connection with

the empty bags, if the latter, when shifted to freight trains, lose their postal character?

Whether a sack of letters or packages is or is not mail, for purposes of pay to the railroad company carrying it, does not depend on the method of the carriage. A very large part of the mails, in locked pouches or bags, is carried in baggage cars, unattended by any employe of the postal department and depending on the baggage agent for its proper unloading at the stations of destination. Yet no distinction is made between such matter and that carried in the post-office cars when the total weight of the mails is ascertained and the pay fixed. What would the Postmaster-General and this court say if it were proposed that the baggage-traffic rules be applied to the mails thus carried; that except as to excess above 150 pounds there could be no charge for any individual consignment and that excess baggage rates should be paid for weight above that amount? What would this court say if when (as sometimes occurs) closed pouches of mail are carried in the car-compartment assigned to express matter and are served in the loading and unloading by the agent of the express company, the railroad company should claim compensation at the rate applicable to express matter, which usually is from two to three times the compensation fixed for mail transportation?

What the Comptroller of the Treasury said on the "blue tag" question is:

> Periodical mail matter, although transported separately from other mail matter, is nevertheless a part of the United States mail, and as such the cost of its transportation by railroad is chargeable to the appropriation for inland mail transportation by railroad routes.

A bag is manufactured by or under the direction of the Government for the sole purpose of conveying mail matter. Shall it be said that it is a *mail* bag when traveling, with its load, in a mail car, a baggage car, or an express car, and is not a *mail* bag when traveling in a freight car to get its load?

The appellant railroad company in accepting a land-grant (act of February 9, 1853, Rec., p. 2), contracted that "compensation" for its mail service should be named provisionally by the Postmaster-General, ultimately by Congress. By force of the Act of July 12, 1876 (Rec., p. 2), its contract was to carry the mails and to receive 80 per cent of the statutory rates of compensation. The contract is not carried out if it receives *no* compensation for carrying the mails; and in applying the law relating to the mails at large the courts would not incline to any interpretation which would have that effect. Is it any more conscionable, when the act of May 27, 1908, is applied, to say that all compensation should be denied with respect to one essential element of the mails?

If possible, a statute, whatever its terms, will be construed so as to avoid doing a serious injury or producing absurd consequences.

Hawaii v. *Mankichi*, 190 U. S., 197.
Lau Ow Bew v. *United States*, 144 U. S., 47.
Heydenfeldt v. *Daney Gold Co.*, 93 U. S., 634 (638).
United States v. *Kirby*, 7 Wall., 482.

Is it not a serious injustice if a railroad company, having contracted to carry the mails for special, reduced rates of compensation, receives no compensation whatever for something that was included in the mails so contracted for and still is inseparable therefrom? Would there not be an absurd result if the Postmaster General should expend for full bags and sacks of mail

the full amount allowed by law for the railway mail service and then, in the view that empty mail bags were not a part of the mails so provided for, should pay something more, separately, for the carriage of these bags?

Obviously, the Postmaster General could not, for the reason that he had exhausted his funds in paying for the full bags and sacks carried, exact from a railroad company free carriage of empty bags. Is it any more lawful to exact free carriage of empty bags by appellant, and carriage at fifty per cent of freight rates by the larger class of land-aided railroads, for the reason which occurs here, that he was having the bags carried in a new way?

In whatever sense mail bags, loaded or empty, were "property" of the Government before July 1, 1910 (when first the act of May 27, 1908, was applied to this appellant's mail routes) in precisely that sense, none other, have they been property of the Government since that time. Shall the empty mail bags, under the plan of carriage inaugurated at that time, take on pay-day a classification which before that time they did not take?

BENJAMIN CARTER,
Attorney for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, appellant,
v.
THE UNITED STATES.
No. 390.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This is an appeal from a judgment of the Court of Claims dismissing a petition wherein it was sought to recover, in one event, $15,000, and, in another event, $10,689.21, for transporting empty mail bags during the period between July 1, 1910, and February 1, 1912.

STATEMENT OF THE CASE.

Appellant owned and operated a line of railway between Tower Grove (near St. Louis), in the State of Missouri, and Texarkana, in the State of Arkansas. For the purpose of aiding in the construction of that portion of its railway between Poplar Bluff, in the State of Missouri, and Texarkana, in the State of Arkansas, certain public lands had been granted, and

that portion of the road constructed under the terms, conditions, and obligations provided by the acts of Congress approved February 9, 1853 (10 Stat., ch. 59, 155), and July 28, 1866 (14 Stat., ch. 300, 338). The first of these acts provided that—

> the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges, upon the transportation of any property or troops of the United States. (Sec. 4, p. 156.)

And the second act provided:

> That all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the company or corporation owning or operating said road and branches respectively, when so required by the Government of the United States.

The act of 1853 also provided that United States mail should be transported over such road under the direction of the Post Office Department at such prices as Congress may by law direct.

By the act of July 12, 1876 (19 Stat., ch. 179, pp. 78, 82), it was provided that the compensation paid to land-grant railroads for the transportation of mail should be 80 per cent of the amount authorized to be paid to other railroads, and this has ever since been the rule. Prior to 1908 empty mail bags, which it was necessary to transport from one point to another for use in the mail service, were carried as a part of the

mails and were included in the quadrennial weighing, for the purpose of fixing the compensation of railroads. But on May 27, 1908, Congress passed an act (35 Stat., ch. 206, 406, 412) containing the following provisions:

> . And the Postmaster General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, shall be transmitted by either freight or express.

All postoffice appropriation acts subsequent to that time have appropriated a specific sum for the payment of freight or expressage on these articles, including empty mail bags.

The mail going south on appellant's line being much heavier than that going north, it had been accustomed to carry as a part of the mails a large number of empty mail bags which it was necessary to transport from Texarkana and from Little Rock to St. Louis. The quadrennial weighing of mails in the division which included appellant's lines was made between the 17th day of February, 1910, and the 1st

day of June, 1910, and, in accordance with the act of May 27, 1908, prior to the weighing, the empty mail bags were withdrawn from the mails and hence the appellant's contract for the period beginning July 1, 1910, was based upon the weight of the mails exclusive of the empty mail bags; and after July 1, 1910, in further pursuance of that act, these empty mail bags were collected at Texarkana and Little Rock in freightable lots and transported by appellant as freight, for which it charged the regular commercial rates.

Appellant's claim is that it was entitled to be paid for transporting these empty mail bags at the same rate at which it was paid for carrying mails and not at the lower freight rates, and it is alleged that the difference amounts to $15,000.

Its alternative claim is based on the fact that, while it rendered freight bills at the regular commercial rates for carrying the mail bags, there was deducted from the amount of the bills rendered that portion of the same which was earned by carrying the bags over the land-grant portion of its lines, amounting, it is alleged, to $10,689.21. It claims that it is entitled to recover the amount first named, or, if not, then the second amount.

BRIEF.

The foregoing statement of facts would seem to leave little to be said.

I.

In adopting a change of policy on July 1, 1910, the Post Office Department followed literally the directions of the act of Congress. The compensation which appellant was to be paid for carrying the mails was fixed upon the basis of a weighing of the mails exactly as prescribed by law. It has been paid in full the amount so fixed. The empty mail bags were not contemplated by the contract under which it has carried the mails since July 1, 1910, as included in the mails. They have, on the contrary, been carried as directed by Congress as freight, and just as any other freight has been carried. For carrying the mails the appellant has been paid all that its contract called for. There can be no basis for the claim that this amount should be increased unless it can be said that Congress was without power to exclude empty mail bags from the mails and require them to be carried as freight. A mere statement of such a position would be to answer it. Congress has the undoubted right to designate what shall be carried in the mails and what shall be excluded from them. *Ex parte Jackson*, 96 U. S. 727, 732; *Public Clearing House* v. *Coyne*, 194 U. S. 497.

Mail bags are necessary appliances for the carrying of the mails, and when they contain mail may very properly be regarded as incident to that service.

But when they are empty the only purpose in carrying them is to transport them to a point at which they are to be used. Certainly no railroad company has any vested right to carry them at the higher rates paid for the mails instead of transporting them as any other property belonging to the United States would be transported at the regular freight rates.

II.

Nor is there any merit in the claim that these empty mail bags are not property of the United States which the appellant, by the terms of the land-grant acts, under which a portion of its road was constructed, is bound to carry free of charge. As seen from the acts quoted, the language is broad and comprehensive. It applies to all property of the United States. Mail bags are undoubtedly property, and they belong to the United States. If the United States had had occasion to ship over this part of appellant's lines office furniture to be used in one of its public buildings, it could scarcely be doubted that the appellant would have been bound to furnish the transportation free of charge. In the present case the United States, having property consisting of mail bags at a point where they were not needed in the Mail Service, had occasion to ship them to a point at which they were needed. For the transportation over that part of appellant's lines to which the land-grant acts did not apply it paid the same freight rates that any individual would have paid for the same service. But,

for the portion of the transportation which, as compensation for land grants, the appellant was obligated to furnish free, payment of freight charges was refused. It is respectfully submitted that the action of the Government in refusing payment was in strict accordance with the mandates of the acts of Congress and that no other course would have been authorized or legal.

III.

It is submitted that the judgment of the Court of Claims should be affirmed.

Respectfully,

WILLIAM L. FRIERSON,
Assistant Attorney General.

APRIL, 1919.

O

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 71. Argued November 12, 1919.—Decided January 5, 1920.

A railroad company which contracted to carry the mail for a compensation fixed by test weighings made after withdrawing empty mail bags, as directed by the Act of May 27, 1908, c. 206, 35 Stat. 412, is not injured by such withdrawal although its purpose was to diminish the pay for mail carriage. P. 205.

Empty mail bags withdrawn from the mails, and which, with other articles of furniture and equipment, are, under the Act of May 27, 1908, *supra*, required to be transmitted by freight or express, are "property of the United States," within the free transportation provisions of the railroad land-grant Acts of February 9, 1853, c. 59, § 4, 10 Stat. 155, and July 28, 1866, c. 300, § 1, 14 Stat. 338. P. 206.

The provision of the land-grant Act of 1853, *supra*, § 6, requiring transportation of the mail over claimant's land-aided road at such price as Congress may by law direct, and that of the Act of July 12, 1876, c. 179, § 13, 19 Stat. 82, fixing the compensation in such cases at 80 per cent. of that generally allowed, do not embrace, as part of the mail, empty mail bags which by the Act of May 27, 1908, are classified with other property of the United States for transportation by freight or express. *Id.*

The Act of June 30, 1882, c. 254, 22 Stat. 120, directing payment on a 50 per cent. basis for army transportation by land-grant railroads, is inapplicable to transportation of empty mail bags. P. 207.

53 Ct. Clms. 45, affirmed.

THE case is stated in the opinion.

Mr. Benjamin Carter for appellant:

The railroad companies obtained public lands for the consideration of serving the Government, by transporting its troops and its property. The contents of the mail bags are not property of the United States, and the mail bags, whether loaded with mails, or going back empty for reloading, are merely appurtenant to the matter carried in them. So, naturally, the loaded bags always had been, and still are, treated as part of the mails and for this reason subject on land-aided railroads to 80 per cent. of the rates of mail pay established, not by the land-grant acts above referred to, but by the Act of July 12, 1876, c. 179, 19 Stat. 78. Inasmuch as every mail bag, while used in the mail service, must sometimes be full and sometimes empty, it would seem to fall reasonably under the operation of this latter act, rather than of the acts which relate to freights and passengers. The acts relating to troops and property have been strictly construed. *United States* v. *Union Pacific R. R. Co.*, 249 U. S. 354; *Alabama Great Southern R. R. Co.* v. *United States*, 49 Ct. Clms. 522; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *United States*, 50 Ct. Clms. 413; *Louisville & Nashville R. R. Co.* v. *United States*, 54 Ct. Clms. 213.

Fifty per cent. rates for freights, the property of the Government, were made generally applicable by the Act of June 30, 1882, c. 254, 22 Stat. 120, and this provision became permanent by codification in the supplement to the Revised Statutes, 1st Supp. Rev. Stats., 376. It seems safe to say that no member of the Congress which enacted that law (knowing that 80 per cent. of full rates was already established by statute for mail service on land-aided routes) believed that, in regard to the carriers' compensation, any element of the mails would ever, by interpretation, be counted as among its subjects.

Did Congress, in providing by the Act of May 27, 1908, that the empty mail bags should be carried by freight trains, mean, besides saving a difference between mail rates and freight rates, to obtain for the bags on land-aided railroad track a different abatement from full rates than that which had applied to them when carried in the mail cars? To say the least, nothing occurred, in the making of this new law, to indicate any such purpose. If it was the purpose that the empty bags should go on a basis of 50 per cent., as against 80 per cent., of full pay on some lines and should be carried free of charge on other lines, it is remarkable that no such consideration was mentioned.

Not merely do the "free-land grant" lines (five in number) suffer a peculiar hardship from the present practice; they thus suffer for the first time. The Act of July 12, 1876, was always construed as giving to land-aided lines uniformly 80 per cent. of the full mail-pay rates. So for twenty-two years the appellant had received for carrying the mail bags, full or empty, the same rates that were paid on those lines to which, as regards passenger and freight service, 50 per cent. compensation was paid by the Government. This fact is shown by the reports of the Postmaster General, judicially known to this court. It was necessarily known to Congress in 1908. In the absence of any legislative avowal or suggestion of a purpose to do so revolutionary a thing, is it not rash to conclude that Congress finally willed that, while all land-aided railroads should remain on one footing as regards loaded mail bags (and their loads) there should be, with respect to the empty bags, one paid class and one unpaid class of land-aided railroads? Is it not more reasonable to say that, in shifting the empty bags from mail-car service to freight-train service and from statutory mail pay to freight rates of pay, Congress did not intend to put any new qualification into the term "rail-road-companies

whose railroad was constructed . . . by a land-grant made by Congress" which it used in the Act of July 12, 1876?

For purposes of compensation, mail bags always, outgoing and incoming and between times, *i. e.*, for repairs, safe-keeping and for proper distribution among the mail routes, are in the hands of the postal authorities. They are never thought of as having any but a mail use.

The Comptroller of the Treasury (17 Comp. Dec. 900) ruled that shipment of "blue tag" matter by freight trains was lawful provided the amount paid therefor, added to the amount due at mail rates for the weight of matter carried in the mail trains, did not exceed the amount which the Postmaster General was authorized to pay for the total weight of mails carried.

The appellant in accepting a land grant (Act of February 9, 1853), contracted that "compensation" for its mail service should be named provisionally by the Postmaster General, ultimately by Congress. By force of the Act of July 12, 1876, its contract was to carry the mails and to receive 80 per cent. of the statutory rates of compensation. The contract is not carried out if it receives no compensation for carrying the mails; and in applying the law relating to the mails at large the courts would not incline to any interpretation which would have that effect. Is it any more conscionable, when the Act of May 27, 1908, is applied, to say that all compensation should be denied with respect to one essential element of the mails?

If possible, a statute, whatever its terms, will be construed so as to avoid doing a serious injury or producing absurd consequences. Is it not a serious injustice if a railroad company, having contracted to carry the mails for special, reduced rates of compensation, receives no compensation whatever for something that was included in the mails so contracted for and still is inseparable therefrom?

Mr. Assistant Attorney General Frierson for the United States.

MR. JUSTICE DAY delivered the opinion of the court.

This case presents questions arising upon a suit brought by the Railway Company in the Court of Claims to recover compensation for the carriage of mail bags under facts found in the Court of Claims in the record sent up for our consideration. These facts are: That the St. Louis, Iron Mountain & Southern Railway Company, a corporation organized under the laws of the State of Missouri, operated a line of railway between Tower Grove, Missouri, and Texarkana in Arkansas. So much of the railway line as lies between Poplar Bluff, Missouri, and Texarkana, Arkansas, was aided in its construction by a grant of land from the United States by the Act of February 9, 1853, c. 59, 10 Stat. 155, and by the Act of July 28, 1866, c. 300, 14 Stat. 338.

The fourth section of the Act of February 9, 1853, provides:

"The said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

The first section of the Act of July 28, 1866, with respect to said railway, provides:

"All property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the company or corporation owning or operating said road and branches respectively, when so required by the government of the United States."

February 4, 1910, the Post Office Department transmitted to the claimant company a distance circular which

relates to mail transportation, the same was duly filled out and certified and returned to the Post Office Department. Between the 17th of February and the 1st day of June, 1910, the Post Office Department made the quadrennial weighing of mail in the weighing division which included the Railway Company's lines. Before this weighing of the mails, Congress passed the Act of May 27, 1908, c. 206, 35 Stat. 412, making appropriations for the Post Office Department, which provides: "The Postmaster-General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, shall be transmitted by either freight or express."

Subsequent to the passage of the Act of May 27, 1908, the Post Office Appropriation Acts provided for specific sums for the payment of expressage on postal cards, stamped envelopes, newspaper wrappers and empty mail bags, and they carried similar provisions as to the withdrawal of said articles from the mails preceding weighing periods.

Before the weighing of the mails of the Railway Company the Postmaster General, acting under authority of the provisions of the Act of 1908, withdrew from the mail the empty mail bags, and the same were thereafter transported by freight over claimant's line of railway, and the weights were not included in estimating the weight of the mail carried during the contract term beginning July 1, 1910.

The findings give the number of pounds of empty mail

bags withdrawn from the mails during the weighing season of 1910 and sent by freight to St. Louis from Texarkana, Arkansas, and Little Rock, Arkansas, and show that if these empty bags had not been so withdrawn and the weight thereof had been included with the weight of the mails, upon which compensation was based, the claimant would have received $15,296.82 more than it did receive for service performed between July 1, 1910, and February 1, 1912.

During the period from July 1, 1910, to and including January 31, 1912, a total of 1,452,271 pounds of empty mail bags were transported over the railroad of the claimant in freight trains from Texarkana, Arkansas, to St. Louis, Missouri, for which service the claimant submitted bills at the published tariff rate against the United States amounting in the aggregate to $14,043.17. In making settlement of these charges the Auditor for the Post Office Department made a deduction for the entire charge for the services performed from Texarkana, Arkansas, to Poplar Bluff, Missouri, amounting to $8,251.45.

The sixth section of the Act of 1853 provides: "The United States Mail shall at all times be transported on the said road and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct."

And the thirteenth section of the Act of July 12, 1876, c. 179, 19 Stat. 78, 82, provides: "That rail-road-companies whose railroad was constructed in whole or part by a land-grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act."

The findings further state that ever since the passage of said last-mentioned act it has been the custom and practice of the Post Office Department to pay all the railroads

whose construction was aided by grants of land from the United States 80 per centum of the rate of compensation paid to non-land-aided roads for carrying the mails.

Claimant presented its bill for the transportation of said freight at the full commercial rate provided by the duly published and approved tariffs. In making settlement therefor, the Postmaster General made deduction of the entire charge between Texarkana, Arkansas, and Poplar Bluff, Missouri, and refused to pay anything therefor, on the ground that the Railway Company was obliged by the provisions of the Acts of 1853 and 1866 to transport said empty mail bags without cost or expense to the United States.

Upon these findings the Court of Claims decided against the claimant, and dismissed its petition. 53 Ct. Clms. 45.

Two questions are presented, which are thus stated in the opinion of the Court of Claims:

"(1) Could the empty mail bags be lawfully withdrawn from the mails merely for the purpose of reducing claimant's compensation for mail transportation service?

"(2) And assuming that said empty mail bags were lawfully withdrawn from the mails and shipped by freight, were they 'property' of the United States within the purview of the land-grant acts of 1853 and 1866?"

As to the first question there can be little difficulty. There was nothing in any law or contract of the Government which required it to permit the weighing of empty sacks or containers as part of the mail in determining the compensation to be paid for carrying the same. While, generally speaking, a bag or container in which letters or other mailable matter is carried is part of the mail, and collectively the containers might be considered as part of the mail essential to carry the mailable matter from one place to another, nevertheless there was nothing to prevent Congress, in fixing compensation for the carriage of the mails to expressly withdraw therefrom the empty

mail bags, and this it did by the Act of May 27, 1908, above quoted.

For the purposes of fixing compensation in the weighing of the mail Congress directed that the weight of the empty bags should be withheld in determining the average weight of the mails as the basis of fixing compensation. We agree with the Court of Claims that such action violated no contractual or other right of the claimant.

Concerning the other question presented there is perhaps more difficulty. By the sixth section of the Act of 1853 it was directed that the United States mail should be transported over the claimant's road at such prices as Congress may by law direct, and by the thirteenth section of the Act of July 12, 1876, a railroad aided by grants of land made by Congress on condition that Congress should fix the basis of compensation for transportation of mails over its lines should receive 80 per centum of the compensation provided for in the act. These acts make specific reference to the amounts to be paid for the transportation of the mails. The payment provided in them is for the transportation of the mails which, it may be conceded, might include with the mail-matter the bags in which the same was carried. However, by the Act of May 27, 1908, the Congress has classified empty mail bags with furniture and equipment and other supplies for the postal service, to be transported by freight or express. Congress thus undertook to make a separate provision covering the carrying of empty mail containers after they had served their purpose of enclosing the mail-matter during transportation.

It is insisted that the return of the empty mail bags is but part of the transportation of the mail. But certainly Congress might provide that empty mail bags should be differently treated than those used in the actual transportation of mailable matter. None will dispute that forwarding mail bags from their place of manufacture to

different points in the country for use would not constitute transportation of mail. We see no reason why Congress may not regard empty mail bags, being returned for further use, as no longer a part of the mails. Congress authorized contracts for the transportation of the mail, but by the Act of May 27, 1908, it withdrew empty mail bags from mail transportation and directed that they be sent by freight or express. How then was such transportation to be compensated? Ordinarily the applicable freight or express rates would control. But the acts of Congress which provided that property of the United States should be transported at the expense of the company were in full force and effect. It is said that in the report and action upon the legislation which took empty mail bags from carriage as part of the mails and directed the carriage by freight or express there is no intimation that the result of such legislation would have the effect of obtaining free transportation under the land-grant acts, and that no such requirement is made in the act itself. But, Congress must be presumed to have known of its former legislation in the Acts of 1853 and 1866, and to have passed the new laws in view of the provisions of the legislation already enacted. These statutes must be construed together and effect given to all of them. Under the earlier acts this railroad in consideration of benefits received, was bound, when required, to transport troops and property of the United States free of charge.

We have here a question concerning the transportation of property of the United States. See *Southern Pacific Co.* v. *United States*, 237 U. S. 202, 204. The act of Congress providing for fifty per cent. rates concerns only "army" transportation and is not applicable to this case. See 22 Stat. 120; 1st Supp. Rev. Stats., 375, 376. The empty mail bags were property, and belonged to the United States. When the Government required their transportation by freight, the former legislation which accom-

panied the grant of lands to this railway company controlled the terms of carriage.

We find no error in the judgment of the Court of Claims, which was also the conclusion of the Comptroller of the Treasury, 17 Comp. Dec. 749.

Affirmed.

MR. JUSTICE McREYNOLDS, dissenting.

Appellant's right to recover seems quite plain to me.

The Act of February 9, 1853, c. 59, 10 Stat. 155, granted lands afterwards used to aid in constructing appellant's lines. Section 4—". . . The said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States." Section 6—"That the United States Mail shall at all times be transported on the said road and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct."

The Act of July 28, 1866, c. 300, 14 Stat. 338, among other things, revived and extended the Act of 1853. Section 1—" . . . *And provided further*, That all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge, and expense of the company or corporation owning or operating said road and branches respectively, when so required by the government of the United States."

And thus it appears that one section of the statutes directs free transportation of "all property and troops of the United States" and a wholly different section requires transportation of the United States mail "under the direction of the Post-Office Department, at such price as Congress may by law direct."

Through the Post Office Department, the United States

are engaged in handling the mails for pay. Their transportation is part of a well defined business. In the orderly course and as an essential part of that business emptied sacks are constantly being returned for further use. They are property of the United States in a certain sense, whether full or empty; and they are elements of the mail whether going out or coming back.

A clear distinction between property of the United States and United States mail is preserved by the very language of the land-grant statutes; and, I think, Congress had no purpose—if, indeed, the power—to convert mail into property within the meaning of these statutes simply by directing carriage of the former in freight trains. The purpose was to secure transportation at less than former cost, and to such end Congress, in effect, commanded that emptied bags, a portion of the mails for which rapid movement is not essential, "shall be transmitted by either freight or express" and compensation made according to the ordinary rates. Under this interpretation, the railroad would suffer no oppressive burden and contemplated economies would be effectuated.